IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T AND I JURISDICTION

CHAMBER SUMMONS NO. 1254 OF 2003

IN

SUIT NO. 20 OF 2002

IN

PETITION NO. 577 OF 2001

Mrs. Roshan Sam Dastoor ..petitioner

vs.

Dr. Adi H. Dastoor and ors.....Respondents

AND

Darayus Soley Panthakey ...Applicants

Mr. R.D. Suryavanshi for caveator in support.

Vinod Thaker for the petitioner.

CORAM: S.U. KAMDAR, J.

DATE : 8TH JULY, 2005.

P.C. :

1. The present chamber summons has been taken out

by the applicant to be impleaded as party petitioner in place of the deceased petitioner. The original petitioner in the present case was Mrs. Roshan Sam Dastoor. She has expired on 24.6.2003 leaving behind her last will and testament dated 26.6.2001. The applicants have filed Probate Petition inrespect of the said last will and testament of the deceased dated 26.6.2001. The said Probate Petition is pending and yet not probated. In the present petition the applicant is seeking to be added as party petitioner on the basis and strength of the last will and testament. The applicant is claiming that he has acquired the right, title and interest in the estate of Mrs. Hilla Homyar Dastoor through the will of Roshan Sam Dastoor. Admittedly the applicant is not the legal heir and representative of the deceased petitioner. He is claioming his rights in respect of the estate of the deceased of Mrs. Hilla Dastoor through the will of the deceased petitioners.

2. I put it to the applicant that I am inclined

to grant the present chamber summons even without a will under which he is claiming rights is probated provided he is willing to give an opportunity to the caveator herein to contest the said will since he is claiming through the said will. Learned counsel appearing for the applicant has refused to give any such opportunity to the caveator herein. Learned counsel has contended that in so far as the caveators are concerned they are not entitled to be served with the citation because they are not the legal heirs and representatives of the deceased Roshan S. Dastoor He has also contested that giving such an opportunity is like a second round of litigation so as to contest the said will. Learned counsel has thereafter contended that he as legatee in the will of Roshan S. Dastoor he is entitled to be added as a party petitioner in the present petition. He has relied upon my judgment passed in Chamber summons no. 1543 of 2003 in Suit no. 695 of 2003 in the case of Smt. Roshan S. Dastoor vs. The Bombay Electricity Supply and Transport, undertaking of the Municipal

Corporation of Greater Bombay dated 7.3.2005 and he has also relied upon another judgment of the learned single judge of this court in Chamber Summons No. 736 of 1992 in Testamentary Suit No. 2 of 1986.

5. In my opinion the Chamber Summons cannot be granted. It is for this reason that the applicant is seeking to be the petitioner in the present petition. Admittedly he is not the legal heir and representative of the said deceased Roshan S. Dastoor or of Hilla Homyar Dastur. His claim arises out of the will of Roshan S. Dastur and the same is not yet protected. In view thereof the present chamber summons can not be granted at this stage. I however passed an order that the present chamber summons to be heard alongwith the probate petition filed by the applicant of Roshan Dastoor. If he suceeds in the said petition and obtains probate he will be entitled to prosecute the present petition. With the aforesaid directions chamber summons disposed off.

sd/-

****